

**LONDONDERRY ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053**

MINUTES FROM 05/20/20 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were participating via a ZOOM meeting: Neil Dunn, Chair; Jacqueline Benard, Vice Chair; Suzanne Brunelle, member; Brendan O'Brien, alternate member; Mitch Feig, alternate member. Also, participating were Laura Gandia, Associate Planner; Richard Canuel, Senior Health Officer, Code Enforcement Officer; Bradley Anderson, Code Enforcement Officer, Town Planner Mailloux, Deb Paul, Town Council Liaison; and Beth Morrison, Recording Secretary. Chairman Dunn reviewed the hearing procedures. He appointed B. O'Brien and M. Feig as full voting members.

I. APPROVAL OF MINUTES

J. Benard made a motion to accept the April 15, 2020, minutes as presented.

The motion was seconded by S. Brunelle.

The motion was granted by a roll call vote, 5-0-0.

REPORT BY TOWN COUNCIL – D. Paul reported that she has no update this evening.

II. REGIONAL IMPACT DETERMINATIONS: Associate Planner Gandia informed the Board that she had three projects for their consideration.

1. CASE NO. 05/20/2020-1: Request for a variance from LZO 4.2.1.3.C.2 to encroach 11 feet into the 15 feet side setback for the construction of a shed, 11 Bellflower Hollow, Map 18 Lot 13-75, Zoned AR-1, Erin & Chris Sachs (Owners & Applicants)
2. CASE NO. 05/20/2020-2: Request for a variance from LZO 5.14.B to allow a six-foot fence 25 feet into the 40 feet front setback where only fences 4 feet in height are allowed, One Nettie Way, Map 2 Lot 44-7, Zoned AR-1, Jonathan Cruz (Owner & Applicant)
3. CASE NO. 05/20/2020-3: Request for a special exception for a home occupation pursuant to LZO 5.12 to operate a nail salon, 143 Litchfield Road, Map 11 Lot 20-16, Zoned AR-1, Timothy & Wilda Hood (Owners & Applicants)

Associate Planner Gandia recommended the Board find that these three projects are not developments of regional impact as they do not meet the criteria set forth by the Southern New Hampshire Regional Planning Commission.

J. Benard made a motion to find that all three projects are not of regional impact.

M. Feig seconded the motion.

The motion was granted, 5-0-0, by a unanimous roll call vote.

III. PUBLIC HEARING OF CASES

A. CASE NO 04/15/2020-3: Request for a variance from LZO 7.6.B.3 to allow 24 banner signs which are prohibited, Four Orchard View Drive, Map 7 Lot 40-2, Zoned C-I, Vernco Apple, LLC (Owner & Applicant) – continued from the April 15, 2020 meeting

B. O'Brien read the case into the record noting it was continued from the April 15, 2020, and that the applicant has requested the case to be continued again due to COVID, as he would like to have a meeting in person.

J. Benard made a motion to continue CASE NO 04/15/2020-3 request for a variance from LZO 7.6.B.3 to allow 24 banner signs which are prohibited, Four Orchard View Drive, Map 7 Lot 40-2, Zoned C-I, Vernco Apple, LLC (Owner & Applicant) to June 17, 2020

B. O'Brien seconded the motion.

The motion was granted, 5-0-0, by a unanimous roll call vote. The motion to continue the case until June 17, 2020, was granted.

B. CASE NO. 05/20/2020-1: Request for a variance from LZO 4.2.1.3.C.2 to encroach 11 feet into the 15 feet side setback for the construction of a shed, 11 Bellflower Hollow, Map 18 Lot 13-75, Zoned AR-1, Erin & Chris Sachs (Owners & Applicants)

B. O'Brien read the case into the record. L. Gandia informed the Board there is no previous zoning on this property. Chris & Erin Sachs addressed the Board. C. Sachs told the Board that the shed will encroach 11 feet into the side setback.

He then reviewed the five criteria for the granting of the variance:

- (1) The granting of the variance is not contrary to the public interest: because there will be no adverse effect to public interest by placing the shed in the proposed location.
- (2) The spirit of the ordinance is observed: because there will be no threat the public, health, safety or welfare of the general public.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the general public.
- (4) Values of surrounding properties are not diminished: because it would increase the value as acting as a boundary and provide more privacy.

(5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique as the backyard is not conducive to build a shed and other shed have been built similarly in the neighborhood. The proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. J. Benard asked how large the shed would be. C. Sachs said it would be 10 feet by 16 feet and presented a picture. N. Dunn stated that the 44 inches is over 11 feet. C. Sachs said he measured the 44 inches from the orange stake to the driveway. He showed the Board a picture of his house and where the marker is. N. Dunn asked if the applicant could build the shed further behind the propane tank to the left. C. Sachs responded that the hill slopes back there and then the shed would be in the middle of the backyard, which he believes is an awkward location. N. Dunn asked for the distance between the poles for the propane entry point. C. Sachs said that it would be about six to eight feet away and would not interfere. S. Brunelle asked to see the aerial view. Feig asked if the applicant was the only house that had a slope. C. Sachs said that he is not the only house that has a hill in their backyard. He commented that his slope is steeper than others. M. Feig asked about other neighbors requesting a variance due to the slope. C. Sachs answered that all the other neighbors were granted a variance for different reasons other than a slope issue, but needed it because the houses are so close together. M. Feig asked about other locations for the shed. C. Sachs stated that other areas to build a shed would be in the middle of the backyard and across from the driveway, but did not make sense for him to place his shed there. Chairman Dunn stated that all the houses are on a small lot, as that is how the development was built, and wondered about the value of other houses in the neighborhood. C. Sachs told him that his neighbors built a patio and stare directly into his backyard and felt a makeshift barrier, the shed, would provide some type of privacy barrier for his neighbors. J. Benard asked for clarification on the sentence in the application that states this is the "most sensible location" to place the shed. C. Sachs responded that a shed is used to store equipment and described how he would have to go across the house, through the lawn and to the driveway if the shed was not built in this particular location. J. Benard asked if the hill was ledge or could be dug out. C. Sachs showed a picture and said that he is not going to excavate this hill for a shed and reiterated that it would be a lot to push a snowblower up the hill.

Chairman Dunn asked for public input.

B. O'Brien read an email (Exhibit A) in favor of granting the variance.

Deb Paul, 118 Hardy Road, asked if the shed was a permanent structure or if it could move. C. Sachs said that it would be movable and built on cinder blocks.

Chairman Dunn brought the discussion back to the Board. He asked Brad Anderson, Code Enforcement Officer, if it had to be built sturdier. B. Anderson said that they only need to have it on level ground with cinder blocks. J. Benard mentioned that if the Board grant's this, even if the shed can move, it will stay with the property forever as it is a variance. S. Brunelle commented that she felt the Board could not ask for the applicant to regrade his property as it would affect drainage for other lots. She said that she feels the shed is in a good location and does not have a problem with it. Chairman Dunn said that he thought the applicant could find another location without having the applicant regrade the lot. M. Feig asked if the email read in favor was the direct abutter with the patio. C. Sachs answered that the email was from

the direct abutters. M. Feig and J. Benard said that they are not comfortable with the applicant's statement that the shed's location is "the most sensible." S. Brunelle commented that the Board does not know if there is another place for the shed to be built. Chairman Dunn reviewed some other options for where the applicant could place the shed. E. Sachs pointed out that there is a flat spot on the other side of the house, but it would be less than the 15-feet from the abutter on that side. C. Sachs stated he understands the word "sensible" does not sit well with the Board, but if he could rephrase it, he would change the language.

- (1) The variance would not be contrary to the public interest: because it would not threaten the health, safety and welfare of the general public.
- (2) The spirit of the ordinance would be observed: because there is no threat to the health, safety or welfare of the general public.
- (3) Substantial justice would be done: because the loss to the applicant that would outweigh any gain to the general public.
- (4) Values of the surrounding properties would not be diminished: as there was no evidence presented either way.
- (5) There is not a fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because the property is unique as there is a steep grade in the backyard and the propane tank cannot be moved. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 05/20/2020-1 to grant the variance from LZO 4.2.1.3.C.2 to encroach 11 feet into the 15 feet side setback for the construction of a shed, 11 Bellflower Hollow, Map 18 Lot 13-75, Zoned AR-1, Erin & Chris Sachs (Owners & Applicants) with the following condition:

- 1. The shed shall be no larger than 10 feet to 16 feet.**
- 2. The shed may not enter more than 11 feet 4 inches into the side setback**

S. Brunelle seconded the motion.

The motion was granted, 3-2-0, by a roll call vote. The applicant's request for a variance was GRANTED.

C. CASE NO. 05/20/2020-2: Request for a variance from LZO 5.14.B to allow a six-foot fence 25 feet into the 40 feet front setback where only fences 4 feet in height are allowed, One Nettie Way, Map 2 Lot 44-7, Zoned AR-1, Jonathan Cruz (Owner & Applicant)

B. O'Brien read the case into the record. L. Gandia stated that there is no previous zoning. Jonathan Cruz addressed the Board. He told the Board that he was notified by the Code Enforcement that his fence that was installed into the 40-foot front setback, as well as being over the 4-foot zoning requirement. He commented that he was unaware of the zoning ordinances and relied on the professional person he hired for this.

He then reviewed the five criteria for the granting of the variance:

- (1) The granting of the variance is not contrary to the public interest: because the essential character of the neighborhood would not change, nor the health, safety or welfare of the general public.
- (2) The spirit of the ordinance is observed: because the spirit is to protect the public and the sight distance is okay.
- (3) Substantial justice is done: because the loss to the applicant would outweigh any gain to the general public as he would have to tear down 60 feet of fence.
- (4) Values of surrounding properties are not diminished: because the fence is made well and would not have an adverse effect on the other properties.
- (5) There is no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is unique as sight lines are the same with both a four-foot and six-foot fence. He stated that the proposed use is a reasonable one.

Chairman Dunn asked for questions from the Board. B. O'Brien read a memorandum dated May 12, 2020 from Brad Anderson, Code Enforcement Officer regarding sight impediment into the record. Chairman Dunn asked if a permit would be required. B. Anderson stated that the Town does not require a permit for a fence. Chairman Dunn asked how this was found. B. Anderson said it was found when they were doing inspections in the area. M. Feig asked if the applicant had known this, would he have done it differently. J. Cruz responded that he would have installed a four-foot fence if he had known about the regulations. S. Brunelle asked if the person who installed his fence was a fencing company. J. Cruz responded that the person is a professional landscaping company who also installs fences. S. Brunelle commented that the person who installed his fence should have known better. J. Cruz agreed with her. Chairman Dunn mentioned that he thought this fence changes the character of the neighborhood. J. Cruz said that he can see his point, but stated that his neighbor wants to install the same fence and is okay with his fence. Chairman Dunn said that since the applicant is on a corner lot, he feels the fence is a sight distance issue and would impact the character. J. Benard asked if the applicant addressed the professional company after he found out. J. Cruz answered that he talked to him, but was not willing to do anything about it. J. Benard commented that anything higher than the Town's fence requirements is looked at like a spite fence and changes the character of the neighborhood. She asked why the applicant is not putting the burden on the professional builder. J. Cruz said that the person installed his last fence in Nashua and there are different requirements in Londonderry. M. Feig asked what the goal of the fence was. J. Cruz referenced his plan of his house noting that his front yard is the flattest area for his children to play as there are grading issues in the backyard. Chairman Dunn said that he felt the fence could be used within the required setback. J. Cruz said that there would be a whole section of the fence that would have to be taken down to comply with the 25-foot setback. Chairman Dunn suggested the applicant would have to pivot earlier than he wanted to, but could still use the fence. J. Cruz stated he would have to buy a brand-new fence. J. Benard remarked that the fence can be brought back, as there are two issues, a height issue and a measurement issue. B. Anderson told the Board that if he brought the fence back to the 40-foot setback he could have a six-foot fence if he angled it properly. He pointed out that even if the applicant was granted his variance, he needs to remove a part of his fence because there is a

drainage easement. S. Brunelle said that there are a lot of abutters, six as a matter of fact, and no one is here to protest or object. J. Benard commented that she understands the applicant's frustration for paying for a service that was done wrong, but the applicant has the ability to rectify the problem and come into compliance from a zoning standpoint.

Chairman Dunn asked for public input.

Deb Paul, 118 Hardy Road, commented that she is okay with the six feet, but would like the drainage fixed. J. Cruz said that he will do whatever he needs to do to fix the fence that is in the drainage easement.

The Board closed public input and began its deliberation.

- (1) The variance would be contrary to the public interest: because it would alter the essential character of the neighborhood.
- (2) The spirit of the ordinance would not be observed: because it would alter the essential character of the neighborhood.
- (3) Substantial justice would not be done: because the loss to the public would outweigh any loss to the applicant.
- (4) Values of the surrounding properties would be diminished: the fence will affect the sight distance of the neighborhood.
- (5) There is a fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: because there is nothing unique about this property to allow the installation of a six-foot fence. The proposed use is a reasonable one.

J. Benard made a motion in CASE NO. 05/20/2020-2 to deny the request for a variance from LZO 5.14.B to allow a six-foot fence 25 feet into the 40 feet front setback where only fences 4 feet in height are allowed, One Nettie Way, Map 2 Lot 44-7, Zoned AR-1, Jonathan Cruz (Owner & Applicant)

B. O'Brien seconded the motion.

The motion was granted, 5-0-0. The applicant's request for a variance was DENIED.

D. CASE NO. 05/20/2020-3: Request for a special exception for a home occupation pursuant to LZO 5.12 to operate a nail salon, 143 Litchfield Road, Map 11 Lot 20-16, Zoned AR-1, Timothy & Wilda Hood (Owners & Applicants)

B. O'Brien read the case into the record. L. Gandia reviewed the previous zoning on the property. Tim Hood, addressed the Board. T. Hood told the Board that his wife, Wilda Hood, is a licensed nail technician since 2001 and holds a master of cosmetologist since 2009. He added that she owned a nail salon in the Georgia when she lived there. He reviewed the total living space noting that the nail salon would be 17% in total. He said that the only employees would be the occupants of the house. He commented that they

will have only one customer per hour and does not feel this will increase traffic on Litchfield Road. He stated that there is no off-street parking allowed for this home occupation. He informed the Board that Wilda Hood's licenses are up-to-date. He said that they are requesting a sign at the end of the driveway by the mailbox. He said the hours would be Tuesday through Friday from 10 a.m. to 5 p.m. and Saturday from 10 a.m. to 4 p.m. Chairman Dunn asked if he would be seeking to have one additional employee. Wilda Hood responded that right now it would just be her as she is trying to start a new business. Chairman Dunn explained that if they Board does not approve an additional employee now, she cannot hire anyone else in the future. W. Hood commented that she would like to request another person, but would be fine if the Board would grant the special exception with just her for an employee. M. Feig asked for clarification on off-street parking. T. Hood clarified that they have adequate off-street parking and he misunderstood the question. J. Benard asked if the business takes off would the hours remain the same. W. Hood answered that the hours will remain the same. M. Feig asked if the services performed in the house would be the same as a nail salon in town. W. Hood said that the nail services would be the same, such as nail enhancements and a waterless pedicure. D. Paul asked how the applicant would be disposing of the chemicals used in the nail salon. W. Hood stated that all the chemicals will be disposed in the trash. She said that most of her solutions are alcohol and gel-based. M. Feig asked about hazardous materials, noting that there are other towns that do not allow this type of business as a home occupation. Chairman Dunn said the Board has brought this up before with hair salons and the state did not care, but it might be something to think about. M. Feig commented that if this does go forward the Board might want to have a condition that the applicant cannot use any of these hazardous types of substances. W. Hood said that the quantities she uses are very minimal, noting the biggest container she can order is a 32-ounce. She said she also uses an air purifier, which is mandated by the state, to make sure nothing stays within the house that would be harmful. Chairman Dunn asked about state inspections. W. Hood said that the state does unannounced inspections. She said that she has owned other nail salon's and have never had an inspection.

Chairman Dunn asked for public input.

Joanne Leone, 3 Yellowstone Drive addressed the Board in favor of the Board granting the special exception. J. Leone said that she does not expect there to be any problems with this

Chairman Dunn brought the discussion back to the Board and went into deliberation. Chairman Dunn read from the home occupation checklist and gathered the consensus of the Board. M. Feig stated that in his opinion, he is worried about the environmental impact of the nail salon. Chairman Dunn said that the applicant stated she uses alcohol-based solutions and feels that this is very safe. J. Benard commented that she knows the state regulates what the applicant can buy and what quantities and therefore has no objections. M. Feig remarked he would like a condition that no chemicals are allowed that are listed in the ordinance. L. Gandia suggested that the Board can ask Richard Canuel for his input, the Board could continue the case to gather more information, or add a condition that there be no chemicals that fall underneath the code that is referenced in the zoning ordinance. Richard Canuel stated that The Board of Cosmetology regulates nail salons. He told the Board that a nail salon does not buy large quantities of these substances so, therefore, they are not regulated as hazardous waste. He said that he does not look at these chemicals as hazardous. M. Feig stated that he appreciated R. Canuel's opinion, but he is not comfortable with this. Chairman Dunn asked the applicant for more clarification on the chemicals she uses. T. Hood said that he is a hazmat certifier with the military and said that the list from the feds is based on quantity and if you do not exceed the quantity is exempt. W. Hood said she

uses alcohol-based solutions and nail polish remover and is very strict on following the rules. She noted that this is exactly why she does not use water pedicures. Chairman Dunn noted that the applicant would like to request another employee and asked if the Board has a problem with this. M. Feig stated that in his opinion, he felt Litchfield Road is a busy road and one customer an hour would not be a problem, but if there was another employee with more traffic, that might be problem. J. Benard said that it is usually 45-minutes to an hour for a nail treatment and does not think a second employee would be added quickly, as the applicant's testimony states that she wants to go slow. Chairman Dunn asked R. Canuel or B. Anderson about the line of sight. B. Anderson stated that he does not believe there is a sight impediment from driving by many times, but he has not stood in the driveway. R. Canuel said that he also does not think there would be a traffic issue at this point. The consensus of everyone on the Board except for M. Feig was that the applicant met the home occupation criteria.

J. Benard made a motion in CASE NO. 05/20/2020-3 to grant the special exception for a home occupation pursuant to LZO 5.12 to operate a nail salon, 143 Litchfield Road, Map 11 Lot 20-16, Zoned AR-1, Timothy & Wilda Hood (Owners & Applicants)

S. Brunelle seconded the motion.

The motion was granted, 4-1-0 by a roll call vote. The applicant's request for a special exception was GRANTED.

II. Other business: **none**

Adjournment:

S. Brunelle made a motion to adjourn at 9: 20p.m.

M. Feig seconded the motion.

The motion was granted, 5-0-0 by a unanimous roll call vote. The meeting adjourned at 9:20 p.m.

RESPECTFULLY SUBMITTED,

Jim Tirabassi

CLERK

TYPED AND TRANSCRIBED BY Beth Morrison, Recording Secretary.

APPROVED (X) WITH A MOTION MADE BY J. BENARD, SECONDED BY M. FEIG, 5-0-0.

Laura Gandia

From: deniesk58@reagan.com
Sent: Wednesday, May 20, 2020 2:37 PM
To: Laura Gandia
Subject: Case No. 05/20/2020-1 Request for a variance for Erin&Chris Sachs 11 Bellflower Hollow Testimony

As an abutter to 11 Bellflower Hollow, we (Kathy&Dennis Nieskoski 13 Bellflower Hollow) support the request for a variance for Erin &Chris Sachs.

